

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
v.	§	Cr. No. C-09-541 (1)
	§	C.A. No. C-10-266
RUDOLFO VILLANUEVA-GALVAN,	§	
	§	
Defendant/Movant.	§	

**ORDER DENYING WITHOUT PREJUDICE  
MOTION TO VACATE, SET ASIDE OR  
CORRECT SENTENCE PURSUANT TO 28 U.S.C. § 2255  
AND ORDER DENYING OTHER PENDING MOTIONS**

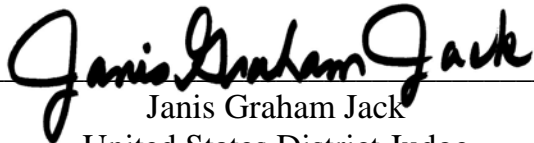
Defendant Rudolfo Villanueva-Galvan pleaded guilty pursuant to a written plea agreement with the government (D.E. 13, 14) and was sentenced by this Court on December 17, 2009. (D.E. 21.) Final judgment was entered on December 18, 2009. (D.E. 23.) Villanueva-Galvan timely appealed and his appeal remains pending before the Fifth Circuit. See generally docket sheet in United States v. Villanueva-Galvan, No. 09-41268 (5th Cir.). Although his attorney initially filed an Anders brief and motion to withdraw, the appellate court ordered counsel to file a supplemental Anders brief or in the alternative a brief on the merits addressing a specific sentencing issues. That order was issued on July 30, 2010, and gives counsel until August 30, 2010 to respond.

On August 6, 2010, the Clerk of this Court received from Villanueva-Galvan a motion pursuant to 28 U.S.C. § 2255, as well as an application to proceed *in forma pauperis*, and motion to appoint counsel. (D.E. 35-38.) The Court cannot address a § 2255 from Villanueva-Galvan while his direct criminal appeal is pending. As the Fifth Circuit noted in Welsh v. United States: “A motion to vacate under 28 U.S.C. § 2255 will not be entertained during the pendency of a direct appeal, in as much as the disposition of the appeal may render the motion moot.” 404 F.2d 333, 333

(5th Cir. 1968), abrogated on other grounds, United States v. Ortega, 859 F.2d 327, 334 (5th Cir. 1988). Similarly, the outcome of Villanueva-Galvan's appeal may moot some or all of the grounds raised in his motion.

For the foregoing reasons, Villanueva-Galvan's motion pursuant to 28 U.S.C. § 2255 (D.E. 35), his motion to proceed *in forma pauperis* (D.E. 36, 37) and his motion for appointment of counsel (D.E. 38) are all DENIED WITHOUT PREJUDICE.

It is so ORDERED this 10th day of August, 2010.

  
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Janis Graham Jack  
United States District Judge